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STOCKHOLDERS' RIGHT OF PREËMPTION. — For just a century authorities have steadily accumulated recognizing a right in stockholders of a corporation, under certain circumstances at least, to subscribe for and demand the same proportion of a new issue of capital stock that they respectively hold of stock previously issued.[1] Through this right of preëmption is sought the preservation to each stockholder of his relative vote and voice in the management of the corporation;[2] also the preservation of his proportionate interest in the corporation's capital or surplus or other property,[3] for a diminution of this proportion causes him pecuniary loss unless full value paid for new stock offsets the decrease in proportionate interest by a corresponding increase in the corporation's property. A further subsidiary reason for the right is, perhaps, found in its furnishing a cumulative remedy in the nature of self-help to minority stockholders against issues of stock fraudulently made to particular persons.[4] On the other hand, the corporation may need funds or other property to fulfill the objects of its incorporation; and public policy, as well as the interests of the stockholders as a body, demands that the corporation be allowed every facility to satisfy its needs. The equitable point of equilibrium between these conflicting interests of the corporation or the stockholders *en masse* and of individual stockholders seems found in allowing this right of preëmption so far and only so far as it does not seriously hamper the corporation.[5]

In accordance with these principles stockholders are given first chance

[1] See Gray *v.* Portland Bank, 3 Mass. 364 (1807); also, cases cited in Cook, Corp., 5 ed., § 286, and in 26 Am. & Eng. Encyc., 2 ed., 947. But *cf.* Ohio, etc., Co. *v.* Nunnemacher, 15 Ind. 294.

[2] See Dousman *v.* Wisconsin, etc., Co., 40 Wis. 418, 421; Crosby *v.* Stratton, 68 Pac. Rep. 130, 132 (Col.). *Cf.* Humboldt, etc., Ass'n *v.* Stevens, 34 Neb. 528, 535.

[3] See Jones *v.* Morrison, 31 Minn. 140, 153; Crosby *v.* Stratton, *supra.*

[4] See Meredith *v.* New Jersey, etc., Co., 55 N. J. Eq. 211, 220; aff. 56 N. J. Eq. 454.

[5] See Stokes *v.* Continental, etc., Co., 91 N. Y. Supp. 239, 246.

to obtain new stock,[6] and probably original stock remaining untaken,[7] when issued at a cash price. If, however, stock once issued returns to the possession of the corporation and is reissued, there is no right of pre-emption,[8] for the old stockholders are not thereby deprived of the proportionate interests in the corporation which they have hitherto enjoyed. Likewise, when stock has been issued in payment for property, the right of preëmption has been denied.[9] In each of the adjudicated cases, however, the property was of a peculiar nature and readily to be furnished only by this particular vendor. Indeed, unless the property bought have these characteristics, it seems that the usual privilege of preëmption should be allowed; for, if stockholders can provide the needed property as well as an outsider, the corporation cannot be seriously harmed by allowing them to preserve their proportionate stockholdings by furnishing other commodities as well as the particular commodity, money.

Granted that a right of preëmption exists, the further question arises whether the corporation can fix the terms upon which the stockholders may obtain their proportionate shares of new issues of stock. According to text-writers, stockholders must be offered the stock at par;[10] and while in most of the cases this particular question has not been material because the corporation has not attempted to sell the stock except at par,[11] there are one or two decisions expressly to the same effect.[12] For the denial of a right to subscribe at par, the measure of damages is, of course, the difference between the par and the market value.[13] In a recent case in New York, however, where the corporation sold all the new stock to outsiders at a fixed price, a dissenting stockholder was allowed to recover the difference between the fixed price of sale and the market value. *Stokes* v. *Continental, etc., Co.*, 36 N. Y. L. J. 589 (N. Y., Ct. App., Nov. 13, 1906). The case expressly represents the doctrine that the stockholders have a first chance to purchase the stock, not at par, but on any reasonable terms that the corporation may prescribe for its sale. The corporation would even be allowed to provide for a sale at public auction; for practically the stockholder might preserve his proportionate stockholdings by paying the same price for additional stock that others would pay, although strictly he must pay one unit more. But a sale to the highest bidder upon sealed proposals would probably be held improper. This doctrine seems firmly grounded in business sense and justice. The stockholders are given a fair opportunity to preserve their proportionate influence and interests in the corporation and its property by purchasing new stock; furthermore, if any be prevented from so doing by a sale at a price at or above actual value, as already noted, they suffer no pecuniary harm. On the other hand, this rule, unlike that of the text-writers, does not impede the corporation in most easily and effectively satisfying its needs and devel-

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[6] See cases cited in 26 Am. & Eng. Encyc., *supra*.

[7] See Crosby *v.* Stratton, *supra;* Morris *v.* Stevens, 17 Pa. Co. Ct. Rep. 209, 213. But *cf.* Sims *v.* Street R. R. Co., 37 Oh. St. 556; Curry *v.* Scott, 54 Pa. St. 270.

[8] Hartridge *v.* Rockwell, R. M. Charlt. (Ga.) 260; State *v.* Smith, 48 Vt. 266; Crosby *v.* Stratton, *supra*.

[9] Meredith *v.* New Jersey, etc., Co., *supra*. See also Russell *v.* Rock, etc., Co., 184 Pa. St. 102; Bonnet *v.* First, etc., Bank, 24 Tex. Civ. App. 613.

[10] See Cook, Corp., 5 ed., § 286; Beach, Priv. Corp., § 473.

[11] See, *e g.*, Eidman *v.* Bowman, 58 Ill. 444; Jones *v.* Morrison, *supra*.

[12] Cunningham's Appeal, 108 Pa. St. 546; Hammond *v.* Edison, etc., Co., 131 Mich. 79.

[13] Gray *v.* Portland Bank, *supra*.

oping its resources; and if the legal limit of stock issues has nearly been reached, it does not virtually compel a dividend of the difference between the par and the market value of the new stock.[14]

LEGITIMATION SUBSEQUENT TO BIRTH. — Legitimacy conforms to the usual rule that the state of domicile determines status. This rests upon the peculiar and permanent interest of sovereign in subject.[1] Strictly this status is not triangular, but exists between the child and each parent separately. Legitimacy as to one parent only is a doctrine familiar to the civil law, but not to be found in any common law holding. Nor is legitimacy necessarily dependent upon marriage, though universally associated with it. The proper sovereign may legitimate quite regardless of wedlock.[2] Once impressed upon the natural relation of parent and child, the status persists, surviving change of domicile. Other states admit its existence, though because of local law they may refuse full recognition to its legal consequences. Thus by the feudal law of England realty can descend only upon legitimate persons actually born in wedlock.[3]

A New York court recently lost sight of these principles when it withheld a devise from *antenati*, legitimated in Michigan by subsequent marriage of their parents, because a previous New York decree had refused to recognize the Michigan divorce first obtained by the father from a New York woman. *Olmsted* v. *Olmsted*, 51 N. Y. Misc. 309. In view of a peculiar New York doctrine, it is hard to understand why the court did not recognize that the Michigan man was divorced, though not the New York woman.[4] This was refused, however, in reliance on Haddock *v.* Haddock.[5] But granting that Michigan had under the doctrine of that case no jurisdiction to pronounce the father divorced, it does not follow that Michigan was without jurisdiction to pronounce the children legitimate. Having, by reason of the domicile of all parties concerned, complete jurisdiction *in rem*, she could and did impress the status of legitimacy upon these children *ab præsenti;* whether for reasons wise, mistaken, or arbitrary would seem no concern of New York's. Nor can any local policy[6] or rule of real property[7] be invoked to justify the decision. As the first fruits of Haddock *v.* Haddock[5] it is not reassuring.

The law of legitimacy is not, however, without difficulties. Though courts agree that the state of the father's domicile at the child's birth is the proper one then to confer or withhold legitimacy[1] (at least as to the father), they do not always distinguish two kinds of subsequent legitimation. By the civil law subsequent marriage of the parents effects a valid pre-

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[14] See 18 HARV. L. REV. 541.

[1] *In re* Goodman's Trusts, 17 Ch. D. 266, *per* James, J., at 297.

[2] McDeed *v.* McDeed, 67 Ill. 545.

[3] Birtwhistle *v.* Vardill, 7 Cl. & F. 895. See 6 HARV. L. REV. 379. This is followed in a few states only. Lingen *v.* Lingen, 45 Ala. 410; Williams *v.* Kimball, 35 Fla. 49; Smith *v.* Derr, 34 Pa. St. 126. *Contra*, Caballero's Succession, 24 La. Ann. 573; Dayton *v.* Adkisson, 45 N. J. Eq. 603; Miller *v.* Miller, 91 N. Y. 315; DeWolf *v.* Middleton, 18 R. I. 810.

[4] People *v.* Baker, 76 N. Y. 78.

[5] 201 U. S. 562. See 19 HARV. L. REV. 586.

[6] See Van Voorhis *v.* Brintnall, 86 N. Y. 18; Matter of Hall, 61 N. Y. App. Div. 266.

[7] Miller *v.* Miller, *supra;* Bates *v.* Virolet, 33 N. Y. App. Div. 436.